ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Policies and Rules	)	CC Docket No. 94-158
Concerning Operator Service	)	
Providers and Call Aggregators	)	

REPLY COMMENTS OF GATEWAY TECHNOLOGIES, INC.

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Dated: March 24, 1995.

SUMMARY

The Commission's current NOI into regulating inmate service providers by redefining the term "aggregator" to include correctional institutions—and thus imposing TOCSIA unblocking requirements—is completely inconsistent with the statutory interpretation and policy analysis endorsed by the Commission in its 1991 Report and Order, as well as virtually every commenter in this proceeding. Correctional institutions are not "aggregators" and inmate service providers are not "OSPs" under the TOCSIA amendments to the Communications Act. Nothing has changed since 1991 to provide any reasonable basis for reversing this decision. Thus, for the Commission to attempt to regulate inmate service providers under TOCSIA would be an inappropriate, and unlawful, abuse of administrative discretion.

In any event, since the inmate communications market is vigorously competitive, rate regulation is not needed. The competitiveness of this market is concretely illustrated by the supply of technologically advanced CPE, fraud and security controls, and other management services to correctional institutions, as well as competitively based rates. Since most correctional contracts require inmate service providers to price their services at or below the dominant carrier's rates, the market is already dictating reasonable rate levels for inmate traffic.

The Commission is equipped with more moderate and rational mechanisms by which it can control inmate service rates other than attempting to rewrite TOCSIA. For example, the Commission could require inmate carriers to follow Gateway's example of double branding all of its inmate calls and quoting rates in "real-time" prior to acceptance by the called party. Both of these approaches would ensure informed consumer decisions and provide an empirical basis for Commission enforcement proceedings against the small handful of carriers charging excessive inmate service rates.

Consideration of inmate service rate regulation, such as the rate cap proposed by some commenters, is not appropriate to this proceeding. The Commission's proposal for a rate cap has already been the subject of exhaustive comment in Docket No. 97-22, the billed party preference proceeding, and should not be duplicated here. However, any rate regulation the Commission decides to implement for inmate service providers should be market driven, rather than the unsubstantiated and inflated "benchmark" proposal of the ICSPTF. If the Commission ultimately determines that an inmate service rate cap is preferable to targeted enforcement proceedings, it should select a more reasonable—and far lower—benchmark that does not create perverse incentives for unecessary increases in inmate rates.

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REPLY COMMENTS OF GATEWAY TECHNOLOGIES, INC.

Gateway Technologies, Inc. ("Gateway"), by its attorneys, hereby replies to the Comments filed pursuant to the Commission's Notice of Inquiry ("NOI")[1] on whether the definition of "aggregator" should be expanded to include correctional institutions and what changes, if any, should be made in regulating inmate-only telephones.

INTRODUCTION

The comments filed in response to the Commission's NOI wholeheartedly confirm what Gateway first introduced to the Commission in 1991 and reiterated in it opening comments—that both as a matter of statutory interpretation and policy, correctional facilities are not "aggregators" and inmate services providers are not operator services providers ("OSPs") under the Telephone Operator Consumer Services Improvement Act of 1990, 47 U.S.C. § 226 ("TOCSIA").[2] While Gateway recognizes that the Commission has received a small number of informal complaints

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[1] Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators, Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 94-158, FCC 94-352, (released Feb. 8, 1995)("NOI").

[2] See generally Comments of Gateway Technologies, Inc. on Further Notice of Proposed Rulemaking, CC Docket No. 90-313 (filed Jan. 22, 1991)("Gateway 1991 Comments"); Comments of Gateway Technologies, Inc. on Further Notice of Proposed Rulemaking, CC Docket No 92-77, at 7-17 (filed Aug. 1, 1994)("Gateway 1994 BPP Comments"); Reply Comments of Gateway Technologies, Inc. on Further Notice of Proposed Rulemaking, CC Docket No. 92-77 at 7 (filed Sept. 14, 1994)("Gateway 1994 BPP Reply Comments").

concerning a few unscrupulous inmate services providers charging unjustifiable rates, the Commission should not—and indeed cannot—attempt to regulate inmate services by expanding the definition of "aggregator" to include correctional facilities.

If the FCC ultimately decides that regulation of inmate services providers' rates is necessary, it should do so by using its ample enforcement powers to investigate specific carriers and order them to reduce their unjust and unreasonable rates. Moreover, any decision on rate regulation—including the "rate cap" urged by several commenters here—should be made in Docket No. 92-77, the billed party preference proceeding, where the issue has already been commented on extensively. Furthermore, any rate cap should be competitively based, avoiding the creation of an artificial regulatory "price umbrella" that would only serve to sanction excessive inmate service rates. Thus, the Commission should reject the proposal, endorsed by some of the very carriers who have been extorting unreasonable rates from unsuspecting inmate families, to allow up to a $2.00 per call increment over dominant carrier inmate service rates.[3]

DISCUSSION

I. THE COMMENTS UNANIMOUSLY RECOGNIZE THAT CORRECTIONAL FACILITIES ARE NOT "AGGREGATORS" UNDER THE TOCSIA AMENDMENTS TO THE COMMUNICATIONS ACT

Since 1991, Gateway has been at the forefront in arguing, and demonstrating to the Commission, that statutory interpretation and policy analysis compels the conclusion that correctional institutions are not "aggregators" under TOCSIA and thus are not subject to "unblocking" regulations.[4] In its 1991 Report and Order, the

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[3] Inmate Calling Services Providers Task Force ("ICSPTF") Comments at 7-8. Comments filed in this docket on March 9, 1995 will be cited by name of the party and the applicable page numbers, e.g., "ICSPTF Comments at 7-8."

[4] See, e.g., Gateway 1991 Comments at 3-4, 7-17.

Commission expressly confirmed Gateway's statutory interpretation,[5] holding that "the definition of 'aggregator' does not apply to correctional institutions as providers of inmate-only phones."[6] See Gateway Comments at 1-4. Moreover, since correctional institutions are not "aggregators" under the Communications Act, firms providing inmate-only services are likewise not OSPs.[7] Thus, because the Commission lacks the statutory power to revise the definition of "aggregator," there is absolutely no basis for the NOI's examination of this issue. With one exception, addressed below,[8] all of the comments filed in response to the NOI concurred that, as a matter of basic statutory law, correctional facilities are not "aggregators" and inmate services providers are not OSPs.[9]

As Gateway explained, the Commission's decision to exclude correctional institutions from the definition of "aggregator" was driven not only by this statutory imperative, but also by the unique security, fraud prevention and other policy issues inherent in providing telecommunications services to inmates.[10] Gateway Comments at 3-4. The Commission recognized in 1991 that this market "presents an exceptional set of circumstances that warrants [its] exclusion from the regulation[s]" generally applicable to aggregators and OSPs.[11] Again, virtually every commenter discussing this issue agreed that inmate services providers—in order to ensure secu-

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[5] Policies and Rules Concerning Operator Service Providers, Report and Order, 6 FCC Rcd. 2744, 2752 (1991)("Report and Order"), citing Gateway 1991 Comments at 3-4.

[6] Id. at 2752 ¶ 15.

[7] Gateway Comments at 3, quoting Report and Order, 6 FCC Rcd. at 2752 n.30, and 47 U.S.C. § 226(a)(4).

[8] As a result of the Nevada Public Service Commission's erroneous conclusion that the inmate service market is not competitive, it alone argued for the expansion of the term "aggregator" to include correctional facilities. Nevada PSC Comments at 2. As explained in detail below, this market is robust and fiercely competitive.

[9] E.g., MCI Comments at 7; Robert Cefail & Assoc. Comments at 6; AT&T Comments at 5; Ameritel Comments at 4-10.

[10] Report and Order, 6 FCC Rcd. at 2752 ¶ 15.

[11] Id.

rity and prevent inmate toll fraud—must be able to restrict inmate calls to a designated carrier on a collect-only basis.[12] For example, MCI empasized that:

> there are strong public interest reasons to control inmate access to the public switched network—both to protect members of the public and to prevent fraudulent use of carrier services. Thus the 'exceptional circumstances' which warranted the exclusion of inmate-only telephones from the TOCSIA requirement still exist and, therefore, the Commission should not modify its decision in this respect.[13]

No commentor has presented any empirical or policy justifications mandating the elimination of the collect calling restriction for inmate services. Thus, in addition to TOCSIA's express statutory requirement, the FCC as a matter of policy must exclude correctional institutions from the unblocking obligations imposed on "aggregators" under the Commission's regulations implementing TOCSIA.

For the Commission to reverse its own precedent and impose TOCSIA's aggregator regulations on correctional facilities would not only be inappropriate, but would constitute an unlawful abuse of administrative discretion. The courts have consistently and specifically held that before the Commission can appropriately retreat from a prior decision, it must, at a minimum, provide a reasoned analysis supporting the change.

> [A]n agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute.[14]

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[12] Ameritech Comments at 5-6; Pacific Telesis Comments at 3; GTE Comments at 4; Sprint Comments at 3-4; ; Georgia Dep't of Admin. Services Comments at 2-3; Executone Comments at 7-8; Opus Correctional Comments at 2; MCI Comments at 7; AT&T Comments at 5-6; Consolidated Communications Public Services, Inc. Comments at 2; Robert Cefail & Assoc. Comments at 7-8; Global Tel*Link Comments at 6-8; Ameritel Comments, at 7-10.

[13] MCI Comments at 7-8.

[14] Greater Boston Television Corp. v. FCC, 444 F.2d 841, 852 (D.C. Cir. 1970), cert. denied 403 U.S. 923 (1971).

In other words, something crucial to the original justification for an administrative rule must have changed materially in order for the agency to reverse a prior decision. As the Supreme Court has emphasized, "an agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance."[15]

In its NOI, the Commission does not suggest that any changes have occurred warranting a new policy or standard, indicating quite clearly that no reasonable justification for expanding the statutory definition of "aggregator" exists. The Commission's 1991 Report and Order was correct, and absolutely "nothing has changed since that decision that would give reason to change it."[16] See Gateway Comments at 5-8. As Sprint argued:

> having construed the statutory definition of "aggregator" as excluding prison phones just a few years ago, any attempt by the Commission to reverse course 180 degrees simply because its view of policy considerations has changed, would be open to serious legal challenge.[17]

In sum, given the Commission's well-reasoned and long-standing decision based on proper statutory interpretation and policy, it would be irresponsible—as well as unlawful under the Administrative Procedure Act—for it to attempt to rewrite TOCSIA's "aggregator" definition. To the extent the NOI was searching for a reason to apply aggregator and OSP rules to the inmate services market, the record supplies nothing close to the requisite basis for reversing the Commission's 1991 decision.

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[15] Motor Vehicle Mfg. Assoc. v. State Farm Mutual Auto. Ins., 463 U.S. 29, 42 (1983)(emphasis supplied).

[16] Georgia Dept. of Admin. Services Comments at 2.

[17] Sprint Comments at 3.

II. UNIVERSAL INMATE SERVICE RATE REGULATION IS NOT NECESSARY IN THIS COMPETITIVE MARKET

The only commenter affirmatively arguing for application of TOCSIA regulation to correctional institutions and inmate service providers is the Nevada Public Service Commission ("Nevada PSC").[18] Contrary to the Nevada PSC's naked assertion, the inmate services market is a robust and fiercely competitive market consisting of providers who vie to provide the highest quality services at an efficient and reasonable price. The competitiveness of this market is clearly evidenced by its significant technological innovations and competitive rates. Gateway Comments at 8-9.[19]

The Nevada PSC fundamentally mischaracterizes the inmate market because it ignores both the security and fraud prevention safeguards that each inmate carrier must rely upon to service this market.[20] Furthermore, this argument evidences a misunderstanding of the bidding process by which carriers contend for contracts with a particular correctional facility. The bidding process is subject to brutal competition. "Correctional facilities typically issue requests for proposal ("RFPs") for their inmate presubscription contracts every several years. Bidding for such contracts is fierce, and inmate authorities have a wide range of choices in selecting a successful bidder."[21]

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[18] Nevada PSC Comments at 2.

[19] See also Executone Comments at 15-16 ("Existing regulation has encouraged competition in the inmate-only market. This competition is not merely competition on the basis of price; it has inspired the development of systems with sophisticated functionalities that aid prison officials in performing control functions. . . ."); Opus Correctional Comments at 4 ("These 'cutting edge' technological advances are the direct result of the existing regulatory regime, which provides competitive incentives for continued service and technological improvements"); Robert Cefail & Assoc. Comments at 10-11.

[20] The fact that security and fraud prevention requirements demand that only one carrier service a correctional facility is well-established, see Gateway Comments at 3-5; Gateway 1991 Comments at 16-18; Gateway 1994 BPP Comments at 4-8, 16-18; Gateway 1994 BPP Reply Comments at 5-7; Gateway Ex Parte Filing, CC Docket No. 92-77, at 3-5 (filed Feb. 1, 1995)("Gateway 1994 BPP Ex Parte"), and is not directly challenged by the Nevada PSC.

[21] Opus Correctional Comments at 4; Robert Cefail & Assoc. Comments at 10.

Moreover, as Gateway explained most RFPs require that carriers charge rates equal to or less than those charged by the dominant carrier. Gateway Comments at 6.[22] For example, the Georgia Department of Administrative Services commented that:

> In Georgia, and in many other states, the system/services provider is also contractually required to charge rates equal to or less than those which would be charged by the dominant carrier for the same type of call made at the same time/day. In other words, no greater than what AT&T would charge for the same interLATA call or not greater than what the LEC would charge for the same local/intraLATA call. We believe that this treats inmate fairly, allows the system/services provider to recapture is investment in hardware/software and operating costs, and saves the taxpayers of the State of Georgia significant additional costs in operating its correctional facilities.[23]

While Gateway recognizes that there have been isolated instances of over-charging, this problem is being solved by the market.[24] For the Commission to intrude with rate caps or some other form of broad-sweeping rate regulation, when market forces are generally succeeding in controlling this market, would be unnecessary and fatal to the legitimate security fraud and other unique requirements of federal, state and local correctional institutions.

III. IF THE COMMISSION IS SERIOUSLY CONCERNED ABOUT INMATE CALLING RATES, IT SHOULD RELY ON ITS EXISTING ENFORCEMENT MECHANISMS RATHER THAN UNJUSTIFIABLY REVERSING ITS PRIOR DECISION

As Gateway has made clear repeatedly, Gateway is sensitive to the fact that some inmate families are paying unreasonably high rates, and is thus careful to ensure that its own rates are cost-based, reasonable and competitive. See, e.g., Gateway

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[22] See Global Tel*Link Comments at 5; Ameritel Comments at 11; Pacific Telesis Comments at 4; Gateway 1994 BPP Comments at 11; see also Comments of Value-Added Communications, Inc., CC Docket No. 92-77, at 4 (filed Aug. 1, 1994).

[23] Georgia Dept. of Admin. Services Comments at 3.

[24] See Ameritel Comments at 11 ("[M]ost correctional facility administrators are now sensitized to the overcharging issue and contractually require that [inmate service providers] not charge in excess of dominant carrier rates for collect calls originating from their facilities.")

Comments at 6 & n.7. Although the evidence clearly shows there is no market-wide problem of excessive rates in the inmate services industry, there nonetheless appears to be a small group of unscrupulous inmate services providers who regularly charge excessive rates. Thus, instead of taking on the insurmountable legal barrier of rewriting its TOCSIA rules to cover inmate services, the Commission instead should use its existing enforcement mechanisms to specifically target the individual carriers who, unlike Gateway, charge inflated rates. Gateway Comments at 6.

Gateway concurs with the suggestions of Pacific Telesis and MCI that the Commission should regulate inmate carrier's rates through its tariff filing requirements.[25] Under Sections 201(b) and 205(a) of the Communications Act, the Commission has ample authority to ensure that a carrier's rates are just and reasonable. Furthermore, Section 203(a) specifically allows the FCC to request information from a carrier to support questionable rates. Thus, if the Commission believes that some inmate service providers are charging unreasonable rates, it can investigate and order those carriers to reduce their rates to a reasonable level. Given the fact that the Commission has never to date sought to utilize these ample enforcement powers, it would be inappropriate to impose the panoply of "aggregator" regulations on every firm in the inmate services market to address what appears at most to be a handful of informal complaints against a relatively small number of unscrupulous carriers. See Gateway Comments at 6-8.

Moreover, there are a variety of moderate alternatives for affecting inmate service rates and consumer protection that would not have the drastic effects on this market that would result from imposing the "aggregator" regulations. Specifically, the Commission could require carriers to follow Gateway's practice of quoting their rates in "real-time." Gateway Comments at 16. This practice, which is endorsed in

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[25] Pacific Telesis Comments at 4; MCI Comments at 8.

principle by the Texas Public Utility Commission, would inform the billed party of the rates before he or she accepts the call, thus preventing any "surprise" charges.[26]

Similarly, the FCC could mandate that inmate service carriers adopt Gateway's practice of "double-branding" their calls by identifying themselves both to the inmate and the billed party before the call is connected. Several of the commenters endorsed this approach as well.[27] As the Minnesota Department of Public Service argued:

> [b]randing a call should be mandatory for collect calls because it alerts called parties to the fact that they are likely to be billed for a call by other than their local exchange company or pre-subscribed long distance company.[28]

Pacific Telesis likewise proposes double branding inmate traffic. "The FCC may reject [inmate service] rates it finds unreasonable. Branding calls to both the calling and called party, as Pacific Bell does, will also help mitigate this concern."[29] Thus, there are more appropriate mechanisms for addressing any rate problems in this market than by reclassifying correctional institutions as "aggregators." Imposing the numerous aggregator regulations, such as unblocking requirements, would choke this robust competitive market, and expose correctional institutions to a massive risk of fraud.

IV. CONSIDERATION OF AN INMATE SERVICES RATE CAP IS UNDERWAY IN THE BPP DOCKET AND SHOULD NOT BE DUPLICATED HERE

The Commission should not duplicate its consideration of an inmate services rate-cap in this docket, since interested parties have already commented extensively on this proposal in CC Docket No. 97-22, the billed party preference proceeding. The

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[26] Texas PUC Comments at 3.
[27] Gateway Comments at 16; Texas PUC Comments at 3, Pacific Telesis Comments at 4.
[28] Minnesota DPS Comments at 3.
[29] Pacific Telesis Comments at 4 .

Commission's June 1994 Further Notice[30] in the BPP proceeding specifically sought comment on whether the FCC should undertake regulation of inmate services providers rates.

> [W]e seek comment on the suggestion offered by some OSPs and [competitive payphone providers] serving prison facilities that prisons be exempted from BPP if they subscribe to an OSP that charges rates below that of the dominant carrier for inter and intraLATA calls.[31]

Many of the commenters in this docket cited and referred to BPP as the appropriate mechanism for regulating inmate calling rates.[32] Although Gateway strongly disagrees that BPP is the right answer, there is no real dispute that the BPP docket is the proper vehicle for determining this issue. The Commission's consideration of rate regulation in this docket would not only be administratively inefficient, but also dangerous in that parallel rulemakings could easily result in inconsistent regulations. Gateway Comments at 13-15. There are no advantages, only disadvantages, to the Commission's duplicative consideration of rate regulation in this docket.

V. IF THE COMMISSION INSTITUTES A RATE CAP IT SHOULD BE COMPETITIVELY BASED RATHER THAN THE "PRICE UMBRELLA" PROPOSED BY ICSPTF

In a recent ex parte submission, the Inmate Calling Services Providers Task Force of the APCC ("ICSPTF") proposed a "benchmark" form of rate regulation, whereby the Commission would require inmate carriers to keep their rates below an established threshold.[33] The ICSPTF proposed benchmark is based on AT&T's current operator services surcharge for inmate calling and AT&T's current daytime usage rates, but also includes a so-called "safe harbor" provision that would permit the

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[30] Billed Party Preference for 0+ InterLATA Calls, Further Notice of Proposed Rulemaking, 9 FCC Rcd. 3320, ¶¶ 44, 51 (1994)("Further Notice").

[31] Id.

[32] Sprint Comments at 4; AT&T Comments at 6; see also Executone Comments at 16.

[33] ICSPTF Ex Parte Letter, CC Docket Nos. 94-158 & 92-77, at 2 (Feb. 21, 1995)("ICSPTF Ex Parte").

exception to swallow the rule—allowing inmate service providers to set their rates for the first minute and next additional ten minutes substantially above AT&T's rates "to account for the higher costs of certain providers."[34] Specifically, carriers could charge up to an additional $.50 more than AT&T for the first minute and up to an additional $.15 above AT&T's per minute rates for the next ten minutes. "Thus, there would be a maximum charge of $2.00 above the dominant carrier's daytime rate for inmate calls, with the maximum reached only for calls that reached or exceeded eleven minutes in length."[35]

Gateway strongly opposes this proposal. ICSPTF's offer is not really a rate cap, but rather a pricef ix of inmate services rates, well above that which the market would otherwise dictate. Instead of forcing inmate collect rates down, the ICSPTF proposal would sanction carriers increasing their rates to the legal maximum, creating a "price umbrella" and strong incentives for tacit collision in a market that is now highly rate competitive. Moreover, setting inmate prices at $2.00 above the dominant carrier's usage rates is entirely artificial. This "benchmark" does not mirror the market price—which is more accurately reflected in the prevailing RFP requirement that carriers charge rates equal to or less than those charged by AT&T.[36] Since this dominant carrier rate requirement represents the dominant trend in RFPs, it properly reflects the market.[37] Without any substantiation for its claim of higher costs, ICSPTF's $2.00 per call increment is little more than a license to steal.[38]

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[34] Id.

[35] Id.

[36] Gateway 1994 BPP Comments at 22; Gateway 1994 BPP Reply Comment at 11-12; Gateway 1994 BPP Ex Parte Letter at 6; Gateway Comments at 6-7.

[37] See Sprint Comments at 4.

[38] Gateway's per-minute rates are based on AT&T's ordinary MTS mileage-band rates. The only distinction between Gateway's per-minute rates and those charged by AT&T is in the time-of-day and off-peak discounting that the major carriers can afford to offer because their peak traffic volume is during the business day. In contrast, inmate traffic peaks during the night and weekend periods, necessitating application of non-discounted dominant carrier daytime usage rates. Gateway, a reseller that caters to the inmate services market exclusively, is economically unable to match the major carrier evening and weekend discounts. Gateway Ex Parte at 7.

While the ICSPTF proposes a rate cap that is artificially inflated, the Minnesota Department of Public Service's ("Minnesota DPS") suggestion that the Commission should set a rate cap based on AT&T's non-inmate operator services surcharge, unless these carriers can affirmatively justify the higher costs, would have the opposite effect.[39] This rate cap is artificially low and would suffocate the inmate services market. The proposal erroneously and inappropriately presumes that inmate service providers do not incur costs different from calling card services and other traditional operator services.

To the contrary, inmate service providers must apply a special inmate operator surcharge to recover their unique costs involved in installing and maintaining technologically advanced hardware and software—which no one disputes is essential to providing telecommunications services to correctional institutions. The OSPs serving the general public do not experience these costs, and therefore a rate cap based on the mistaken presumption that the costs of these two markets are the same would be inappropriate and inequitable. As Gateway noted in the BPP proceeding:

> Inmate services providers incur unique costs in servicing this market. . . . These costs include, among other things, applying and maintaining the unique CPE necessary in this market, operational expenses for configuring call blocking functions and inmate PINs, and increasing demands for new services, such as video services and improved inmate identification technologies.[40]

All carriers, including AT&T, charge higher rates for inmate traffic to reflect this unmistakable difference.[41]

If the Commission decides to impose a rate cap—which Gateway believes is not necessary given the robust nature of the market—it must obviously be based on

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[39] Minnesota DPS Comments at 1 ("[R]ates charged to inmates should not exceed the charges to non-inmates unless the charges can be justified on the basis of costs.")

[40] Gateway 1994 Ex Parte at 6.

[41] Id.

a competitive benchmark. Neither the Minnesota DPS nor the ICSPTF proposals meet this test. In fact, a $2.00 dominant carrier increment would only be a "safe harbor" for those unscrupulous carriers charging unnecessarily inflated inmate services rates that triggered the Commission's concern in the first place. The Commission should accordingly reject the ICSPTF proposal.

Finally, it is clear that the Commission should not issue an NPRM in this docket that unnecessarily replicates the comprehensive record already compiled on inmate service rates in the BPP proceeding. Gateway Comments at 13-15. Interested parties have already fully commented on the issue of whether, and if so how, to regulate inmate service providers in response to the Commission's Further Notice in the BPP proceeding. For the Commission to revisit these same issues here would be administratively inefficient. Furthermore, by opening these issues for comment in this proceeding, the Commission risks implementing inconsistent rulemakings. Thus, an NPRM in this proceeding would be inappropriate and is unwarranted.

CONCLUSION

It is quite clear that the Commission may not disregard its own precedent and redefine "aggregators" to include correctional facilities. The Commission's initial statutory interpretation and policy analyses were correct and remain true today. If the Commission is concerned about the rates that some inmate carriers are charging, it should use its existing enforcement powers to target individual service providers rather than attempt to rewrite TOCSIA to include correctional facilities, particularly because everyone agrees that TOCSIA's unblocking regulations are neither practical nor appropriate in this market. While the inmate telecommunications market is

robustly competitive, if the Commission ultimately decides to consider some type of rate cap, it should do so in the BPP proceeding.

Respectfully submitted,

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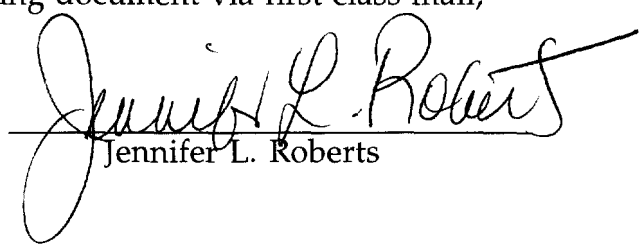
CERTIFICATE OF SERVICE

I, Jennifer L. Roberts, do hereby certify on this 24th day of March, 1995, that I have served a copy of the foregoing document via first class mail, postage prepaid, to the parties below:



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